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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/992,991	11/19/2001	Mark Penny	2000P09056 US01	5765
43713 7590 12/19/2006 JACK SCHWARTZ & ASSOCIATES 1350 BROADWAY, SUITE 1510 NEW YORK, NY 10018			EXAMINER GLASS, RUSSELL S	
			ART UNIT	PAPER NUMBER
			3626	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		12/19/2006	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/992,991	<b>Applicant(s)</b> PENNY ET AL.	
	<b>Examiner</b> Russell S. Glass	<b>Art Unit</b> 3626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 10/16/2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/16/2006 has been entered.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1. **Claims 1-9, 14, 15, 18-21 are rejected under 35 U.S.C. 102(e) as being anticipated by Jacobus et al., (U.S. Pub. 2005/0209891).**
2. **As per claim 1, Jacobus discloses an apparatus comprising:**

- (a) a communication processor for acquiring medical parameters associated with a patient including patient laboratory results, (Jacobus, Abstract; Figs. 12, 14, ¶18, 51, 55) (medical records, clinical observations and medical imagery are considered to be medical parameters including patient laboratory results);
- (b) a processor for collating acquired medical parameters for storage in a database, and allocating visual attributes to the acquired medical parameters for identifying at least one of (a) newly acquired laboratory test results and (b) patients associated with a particular care unit, (Jacobus, Abstract; Figs. 7, 13, 15, ¶ 263, 264)(disclosing organizing and aggregating newly acquired test results and other medical parameter including laboratory test data received from remote instruments and other particular patient data, said organizing and aggregating being a form of collating and allocating visual attributes to the acquired medical parameters, and, disclosing access of specific records and instruments by time/date and also billing data that includes date information); and
- (c) a device for searching said database of acquired medical parameters to find specific laboratory test results based on one or more of (a) a text string identifying a portion of a lab test name, (b) a patient identifier, and (c) a date, for display of the acquired medical parameters and allocated visual attributes in a desired order, (Jacobus, Fig. 10-14; Abstract; ¶18, 51, 55, 56)(disclosing retrieval and display of specific records based on names and authorization codes).

3. As per claim 2, Jacobus discloses an apparatus wherein said network is at least

one of an internet or intra-net compatible network, (Jacobus, Abstract; ¶18).

4. As per claim 3, Jacobus discloses an apparatus wherein said collation processor orders said acquired patient laboratory results by criteria including at least one of (a) test type, (b) date, and (c) patient, (Jacobus, Abstract; Figs. 2, 10, 12, 13) (user assesses "orders" data using criteria such as: data "test" type, patient, and date).

5. As per claim 4, Jacobus discloses an apparatus wherein said searching is based on additional criteria including at least one of (a) patient name, (b) caregiver identifier, (c) text identifying a diagnosis, and (d) text identifying a procedure, (Jacobus, Abstract; Figs. 2, 10, 12, 13) (user assesses "searches" data using criteria such as: patient and/or data type. Data type is considered to include text identifying a diagnosis or procedure).

6. As per claim 5, Jacobus discloses an apparatus wherein said communications processor acquires said test results from said plurality of sources using network protocols including one or more of (a) ASTM and (b) HL7, (Jacobus, ¶10).

7. As per claim 6, Jacobus discloses an apparatus wherein said communication processor continuously acquires said results from one or more of (a) a hospital intranet, and (b) a patient monitoring system, (Jacobus, Abstract, ¶ 18, 51, 57).

8. As per claim 7, Jacobus discloses an apparatus wherein said system acquires

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and displays other information together with said test results in a composite display window, said other information including one or more of (a) ventilator status, (b) diagnosis information, (c) care unit identifier, (d) procedure, (e) caregiver indicator, and (f) laboratory test results indicator, (Jacobus, Fig. 15, ¶¶44, 50, 52, 55, 69-315) (providing a comprehensive list of information acquired and displayed that is considered to include diagnosis information and care unit identifier. In particular, see ¶¶129-213, detailing technician and physician features).

9. As per claim 8, Jacobus discloses an apparatus further comprising a menu generator for generating a window for displaying said specific test results, (Jacobus, Fig. 15, ¶¶44, 50, 52, 55, 69).

10. As per claim 9, Jacobus discloses an apparatus wherein said menu generator comprises an internet browser, (Jacobus, Fig. 15, ¶¶44, 50, 52, 55, 69).

11. As per claim 14, Jacobus discloses an internet compatible method for displaying medical information derived from a plurality of sources, comprising steps of:

(a) acquiring medical parameters associated with a patient including patient laboratory results, (Jacobus, Abstract; ¶18) (medical records, clinical observations and medical imagery are considered to be medical parameters including patient laboratory results);

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- (b) collating said acquired medical parameters for storage in a database, (Jacobus, Abstract; ¶18); and
- (c) searching said database of acquired medical parameters to find specific laboratory test results based on one or more of (a) a text string identifying a portion of a lab test name, (b) a patient identifier, and (c) a date, for display in a desired order, (Jacobus, Abstract; Fig. 10; ¶18),
- (d) allocating visual attributes to the acquired medical parameters for identifying at least one of (a) newly acquired laboratory test results and (b) patients associated with a particular care unit, (Jacobus, Abstract; Figs. 7, 15, ¶ 263, 264)(disclosing organizing and aggregating newly acquired test results and other medical parameter including laboratory test data received from remote instruments and other particular patient data, said organizing and aggregating being a form of collating and allocating visual attributes to the acquired medical parameters), and
- (e) displaying the specific laboratory results and allocated visual attributes, (Jacobus, Abstract; Figs. 7, 15, ¶ 69-71).

12. As per claim 15, Jacobus discloses a method further comprising the step of generating a window for displaying said laboratory test results, (Jacobus, Fig. 15, ¶44, 50, 52, 55, 69).

13. As per claim 18, Jacobus discloses an apparatus wherein further comprising the step of generating a first navigator window displaying results of a search and a second

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window including data representing parameters corresponding to a specific search result, (Jacobus, Fig. 15, ¶¶44, 50, 52, 55, 69) (disclosing a first displaying navigator window results of a search in the form of patient records, and a second window including data representing parameters corresponding to a specific search result in the form of an individual record being created or updated).

14. As per claim 19, Jacobus discloses an apparatus wherein further comprising the step of generating a display including data representing information associated with patients meeting predetermined criteria, (Jacobus, Fig. 5, 15, ¶¶18, 23, 44, 50, 52, 55, 69)(disclosing generating a display with data representing information associated with patients meeting predetermined criteria, said predetermined criteria being disclosed in the form of search terms, filter criteria or medical parameters).

15. As per claim 20, Jacobus discloses an apparatus wherein further comprising a display generator for generating a first navigator window displaying results of a search and a second window including data representing parameters corresponding to a specific search result, (Jacobus, Fig. 15, ¶¶44, 50, 52, 55, 69) (disclosing a first displaying navigator window results of a search in the form of patient records, and a second window including data representing parameters corresponding to a specific search result in the form of an individual record being created or updated).



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16. As per claim 21, Jacobus discloses an apparatus wherein said display generator generates a display including data representing information associated with patients meeting predetermined criteria, (Jacobus, Fig. 5, 15, ¶¶18, 23, 44, 50, 52, 55, 69)(disclosing generating a display with data representing information associated with patients meeting predetermined criteria, said predetermined criteria being disclosed in the form of search terms, filter criteria or medical parameters)..

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**17. Claims 10 -13, 16, 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jacobus in view of Cairnes, (U.S. 6,139,494).**

18. As per claim 10, Jacobus discloses the apparatus of claim 1. Jacobus fails to expressly disclose a system wherein said allocated attribute identifies unreviewed lab results. However, Cairnes discloses such a system, (Cairnes, Abstract; Fig. 6,7,8, col. 8, lines 56-65. col. 9, lines 1-8) (disclosing attributes for reminders, alerts, and daily-triggered critical agenda. It would be obvious to one of ordinary skill in the art to modify Cairnes to include an attribute for determining the status of review of information in view

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of these attributes. The motivation would have been to ensure that lab results are timely reviewed.

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Carnes and Jacobus. The motivation would have been to alert a personal health advisor if the data exceeded predefined medical parameters, (Cairnes, Abstract).

19. As per claim 11 and 13, Jacobus fails to expressly disclose an apparatus wherein wherein said attribute is a predetermined color. However, Cairnes discloses such an apparatus, (Cairnes, Abstract; Fig. 6,7,8, col. 6, lines 37-col. 7, line 17; col. 8, lines 56; col. 9, lines 1-8). Cairnes fails to expressly disclose the use of a color attribute. However, Cairnes discloses numerous attributes for display on a user interface, including: touch screen displays, message lights, and graphical representations. Examiner considers these display attributes to include colors in such a manner as they are commonly found in graphs, screens and charts to better convey information to the viewer.

The statement of obviousness and motivation to combine Jacobus and Cairnes is as provided in the rejection of claim 10 and incorporated herein by reference.

20. As per claim 12, Jacobus discloses an apparatus of claim 1. Jacobus fails to expressly disclose an apparatus wherein said collation processor allocates an attribute for identifying laboratory test results that are outside a predetermined range level.

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However, Cairnes discloses such a system, (Cairnes, Abstract; Fig. 6,7,8, col. 8, lines 56-col. 9, line 8).

The statement of obviousness and motivation to combine Jacobus and Cairnes is as provided in the rejection of claim 10 and incorporated herein by reference.

21. As per claim 16, Jacobus discloses the system of claim 14. Jacobus fails to expressly disclose a method displaying an attribute identifying unreviewed test results. However, Cairnes discloses such a system, (Cairnes, Abstract; Fig. 6,7,8, col. 8, lines 56-65. col. 9, lines 1-8) (disclosing attributes for reminders, alerts, lab results, and daily-triggered critical agenda. It would be obvious to one of ordinary skill in the art to modify Cairnes to include an attribute for determining the status of review of information in view of these attributes. The motivation would have been to ensure that lab results are timely reviewed.

The statement of obviousness and motivation to combine Jacobus and Cairnes is as provided in the rejection of claim 10 and incorporated herein by reference.

22. As per claim 17, Jacobus discloses the system of claim 14. Jacobus fails to expressly disclose a method further comprising the step of allocating an attribute for identifying laboratory test results that are outside a predetermined range level. However, Cairnes discloses such a system, (Cairnes, Fig. 6,7,8, col. 8, lines 56-col. 9, line 8).

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The statement of obviousness and motivation to combine Jacobus and Cairnes is as provided in the rejection of claim 10 and incorporated herein by reference.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Russell S. Glass whose telephone number is 571-272-3132. The examiner can normally be reached on M-F 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached on 571-272-6776. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Patent Examiner  
Art Unit 3626